

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KYLE A. ROBERTS,

Plaintiff,

v.

LEON MILLER, et al.,

Defendants.

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No. 4:15CV00619 NCC

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff's financial information the Court assesses a partial initial filing fee of \$1.70, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b).

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct."

Plaintiff's Allegations

Plaintiff, a self-described Odinist, alleges that his right to practice his religion is being denied because prison officials will not provide him certain books on Norse mythology. Plaintiff is administrative segregation, and while he is administratively confined he may not possess hardback books. According to plaintiff's exhibits, the prison does not have the books that

plaintiff requested in paperback. Defendants Herbert Conley and Leon Miller, both of whom are chaplains, offered plaintiff other books on related subjects, such as Icelandic history. Plaintiff says these books do not address his religious needs.

The exhibits show that all of the religious literature in the Chaplain's office was donated. The prison does not have any monies dedicated to Odinism because it is a "self-practiced religion." Defendant Miller told plaintiff that any materials related to Odinism "will have to be gained through your own resources." Plaintiff alleges, however, that the Chaplain's offices purchases books of the Christian faith for distribution to Christians. Plaintiff claims that the designation "self-practiced religion" violates his right to congregate with other Odinists. Plaintiff sues defendants in their official capacities. He seeks monetary and injunctive relief.

Discussion

The Court will not dismiss plaintiff's injunctive relief claims against Miller and Lombardi at this time. As a result, the Court will direct the Clerk to issue process on these defendants.

Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official, in this case the State of Missouri. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). "[N]either a State nor its officials acting in their official capacity are 'persons' under § 1983." *Id.* As a result, plaintiff is not entitled to monetary relief.

Plaintiff's claim for injunctive relief against defendant Conley must be dismissed because he does not work at the prison where plaintiff is confined.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$1.70 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk is directed to issue process on defendants Leon Miller and George Lombardi.

IT IS FURTHER ORDERED that defendant Herbert Conley is **DISMISSED** without prejudice.

An Order of Partial Dismissal will accompany this Memorandum and Order.

So Ordered this 27th day of April, 2015.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE